

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 * * *

4 PHILIP CHIH-HSIN PENG,

5 Plaintiff,

6 v.

7 INTERNAL REVENUE SERVICE,

8 Defendant.
9
10

Case No. 2:14-cv-01836-APG-GWF

ORDER

(DKT. #1, #3, #4)

11 On March 30, 2015, Magistrate Judge Foley entered his Findings and Recommendation
12 (Dkt. #3) recommending I dismiss the complaint for lack of subject matter jurisdiction. Plaintiff
13 Philip Peng filed a motion for a hearing. (Dkt. #4.)

14 I conducted a *de novo* review of the issues set forth in the Findings and Recommendation.
15 28 U.S.C. § 636(b)(1). Judge Foley's Findings and Recommendation sets forth the proper legal
16 analysis and factual basis for the decision. In addition to Judge Foley's analysis, there is no
17 allegation in the complaint that Peng paid the deficiency such that he could sue in federal court
18 for a refund. *See* 26 U.S.C. § 7422; 28 U.S.C. § 1346; *Reynoso v. United States*, 692 F.3d 973,
19 980 (9th Cir. 2012) (citing *Flora v. United States*, 357 U.S. 63, 68-69 (1958)).

20 IT IS THEREFORE ORDERED that the Findings and Recommendation (Dkt. #3) is
21 accepted and the complaint is dismissed for lack of subject matter jurisdiction.

22 IT IS FURTHER ORDERED that plaintiff Philip Peng's motion for a hearing (Dkt. #4) is
23 DENIED.

24 IT IS FURTHER ORDERED that the clerk of court shall seal Dkt. #1-1 and Dkt. #4
25 because those filings contain personal identifiers.

26 DATED this 8th day of July, 2015.

27 
28 ANDREW P. GORDON
UNITED STATES DISTRICT JUDGE